

**EXHIBIT D**

**ENGAGEMENT AGREEMENT**



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May 7, 2019

Paul E. Harner  
Fee Examiner for the  
bankruptcy cases of Sears Holdings  
Corporation, et al.  
c/o Ballard Spahr LLP  
919 Third Avenue, 37th Floor  
New York, NY 10022

**Re: Engagement of Ballard Spahr LLP**

Dear Mr. Harner:

Ballard Spahr LLP (“Ballard Spahr”) is pleased to have been asked to serve as counsel to you in your capacity as fee examiner in the bankruptcy estates of Sears Holdings Corporation and its affiliated debtors and debtors in possession (collectively, the “Debtors”), for the purposes set forth herein and subject to bankruptcy court approval of the employment of Ballard Spahr. I submit for your approval the following provisions governing our engagement. If you are in agreement, please sign the enclosed copy of this letter in the space provided below.

1. Client; Scope of Representation; Terms of Engagement: Ballard Spahr will represent the Fee Examiner generally in connection with his role as the court-appointed fee examiner in the Debtors’ bankruptcy cases, without limitation, in matters before the United States Bankruptcy Court for the Southern District of New York. The professional services that Ballard Spahr will render to the Fee Examiner include, but shall not be limited to, the following: (a) reviewing with the Fee Examiner fee applications and related invoices for compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the U.S. Trustee Guidelines, and the Local Rules and Orders of the Court; (b) assisting the Fee Examiner in any hearings or other proceedings before the Court to consider fee applications, including, without limitation, advocating positions asserted in the reports filed by the Fee Examiner; (c) assisting the Fee Examiner with legal issues raised by inquiries to and from the retained professionals and any other professional services provider retained by the Fee Examiner; (d) where necessary, attending meetings between the Fee Examiner and retained professionals; (e) assisting the Fee Examiner with the preparation of preliminary and final reports regarding professional fees and expenses; (f) assisting the Fee

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Examiner in developing protocols and making reports and recommendations; (g) assisting the Fee Examiner in conducting such discovery as may be pertinent and necessary to the performance of his other duties and responsibilities after first securing approval of the Court; (h) assisting the Fee Examiner in communicating concerns regarding any application to the Retained Professionals to whom such application pertains and to provide him such supplemental information as he may reasonably require in order to evaluate the reasonableness of any particular fee item; and (i) providing such other services as the Fee Examiner may request. The full scope, terms, and conditions of Ballard Spahr's engagement are set forth herein and in the attached Terms of Engagement.

2. *Fees and Expenses:* As described in more detail in the attached Terms of Engagement, Ballard Spahr's fees will be based on the billing rates for each attorney and legal assistant devoting time to this matter. The ordinary and customary rates of Ballard Spahr's attorneys and paralegals currently range from \$335 to \$1,395 per hour for attorneys and \$160 to \$395 per hour for paralegals and other para-professionals. Similar to many law firms, Ballard Spahr typically increases the hourly billing rates of attorneys and paralegals annually in the ordinary course of business on the basis of advancing seniority and promotion. These increases are typically effective January 1. The Fee Examiner has agreed to Ballard Spahr's practice of periodically adjusting its billing rates, and the Fee Examiner has agreed to pay these annually modified rates.<sup>1</sup> We will render statements for work on this matter monthly, for work performed and expenses recorded on our books during the prior month, and prepare and file necessary papers with the Bankruptcy Court to obtain approval of these fees and approval for you to pay Ballard Spahr. The principal attorneys and paralegal presently anticipated to represent the Fee Examiner, and their current standard hourly rates and their primary offices by location, are set forth in the following chart:

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<sup>1</sup> In addition to the annual increases typically effectuated effective January 1 of each year, Ballard Spahr's hourly billing rates also are subject to review and periodic adjustment to reflect economic and other conditions. Prior to any increase in the rates other than those resulting from advancing seniority or promotion typically effective January 1, Ballard Spahr will file a supplemental affidavit (a "Supplemental Affidavit") with the Court and provide the U.S. Trustee and the Creditors' Committee with notice of any increase. Any Supplemental Affidavit will explain the basis for the requested rate increase.

Name	Primary Office Location	Position	Billing Rate in Effect as of the Appointment Date
Vincent J. Marriott, III	Philadelphia, PA	Partner	\$985 / hour
Tobey M. Daluz	Wilmington, DE	Partner	\$895 / hour
Laurel D. Roglen	Wilmington, DE	Associate	\$490 / hour
Chantelle D. McClamb	Wilmington, DE	Associate	\$445 / hour
Michael G. Greenfield	Philadelphia, PA	Associate	\$445 / hour
Allison H. In	Washington D.C.	Associate	\$440 / hour
Maya Salah	Minneapolis, MN	Associate	\$345 / hour
Brian Kearney	Philadelphia, PA	Associate	\$335 / hour
Chad P. Jimenez	Denver, CO	Associate	\$320 / hour
Chris Lano	Wilmington, DE	Paralegal	\$270 / hour

3. Conflicts. Ballard Spahr may represent creditors and parties in interest in matters unrelated to the Debtors or the bankruptcy cases. None of Ballard Spahr's representations of creditors or other parties in interest in matters unrelated to these cases comprise a material component of Ballard Spahr's practice. Ballard Spahr represents certain parties, as described below, in connection with these cases. We do not believe that our representation of these other clients will affect our judgment in the representation of the Fee Examiner, and upon consideration of the issue, you are satisfied to proceed with our representation of the Fee Examiner despite our representation of such clients. Ballard Spahr's other representations and connections include:

(a) Ballard Spahr currently represents the following entities and their affiliates in their capacity as creditors or landlords that lease non-residential real property to the Debtors in the Debtors' bankruptcy cases:

- a) Acadia Realty Limited Partnership;
- b) Brixmor Operating Partnership LP;
- c) C.E. John Company, Inc.;
- d) Cedar Realty Trust;
- e) Centennial Real Estate Co.;
- f) Centercal Properties, LLC;
- g) C.J. Segerstrom & Sons;
- h) GS Pacific ER, LLC;

- i) GEM Realty Capital, Inc.;
- j) Gemini Alto Centerville Partners, LLC;
- k) Federal Realty Investment Trust;
- l) Heitman Capital Management;
- m) Kravco Company;
- n) PGIM Real Estate;
- o) Primestor Development, Inc.;
- p) Heidenberg Properties LLC;
- q) Starwood Retail Partners, LLC;
- r) The Macerich Company;
- s) Vintage Real Estate LLC;
- t) WBCMT 2007-C33 Independence Center LLC;
- u) Weitzman; and
- v) White Plains Galleria Limited Partnership.

(b) Brixmor Operating Partnership LP, one of the landlords and creditors that Ballard Spahr represents in the Debtors' bankruptcy cases, also serves as a member of the Creditors' Committee appointed in the Debtors' bankruptcy cases, and attorneys at Ballard Spahr participate in meetings and communications of the Creditors' Committee.

(c) Ballard Spahr also represents Willis Towers Watson PLC and its affiliates as creditors and counterparties to contracts with the Debtors in the Debtors' bankruptcy cases.

(d) On numerous prior occasions, the Fee Examiner and other partners and employees of Ballard Spahr have worked with the United States Trustee, employees of the Office of the United States Trustee and partners and employees of professional firms employed by parties in interest in these cases, in certain instances with clients that were adverse to us, in bankruptcy cases, litigation, transactions or other matters unrelated to the Debtors or their affiliated debtors and debtors in possession.

If an actual conflict arises between the Fee Examiner, the Debtors, or their creditors, and an existing client of Ballard Spahr with respect to a particular matter in these cases, and such client has not provided a waiver, Ballard Spahr will not represent or render legal advice or services to the Fee Examiner in connection with such matter, and the Fee Examiner will engage conflicts counsel for the purpose of handling such matter.

Please sign and return to us a copy of this letter in order to confirm that it accurately reflects the scope, terms, and conditions with respect to this engagement.

Once again, we are pleased to have this opportunity to work with you.

Very truly yours,

Vincent J. Marriott, III

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**AUTHORIZATION**

I hereby request that Ballard Spahr LLP undertake the representation described in the above-described engagement under the terms set forth in this letter and the attached Terms of Engagement, subject to approval of the same by the Bankruptcy Court.

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Paul Harner, not individually, but solely in  
his capacity Fee Examiner in the bankruptcy  
cases of Sears Holdings Corporation



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## Terms of Engagement

The following terms together with the accompanying letter of engagement constitute the terms of your engagement of Ballard Spahr LLP ("Ballard Spahr") as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of Ballard Spahr's agreement with you. Therefore, we ask that you review these terms carefully and contact us promptly if you have any questions. We suggest that you retain these terms in your file.

1. **CLIENT.** It is understood that Ballard Spahr's Client for purposes of this representation is limited to the individual or entity specifically identified in the engagement letter and does not include others.

2. **SCOPE OF REPRESENTATION.** Our representation is limited to performance of the services expressly described in the engagement letter and does not include representation of you or your interests in any other matter. It is important that you have a clear understanding of the legal services we will provide and that you contact us promptly to discuss any questions that you may have about them. You may limit or expand the scope of the representation from time to time, provided that any substantial change is agreed to by us and made in writing. We will provide legal counsel to you in reliance upon information and guidance provided by you, keep you reasonably informed of the status of the matter, and respond to your inquiries. Any expressions on our part concerning the outcome of your legal matters are expressions of our professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.

3. **REGARDING FEDERAL TAX ADVICE.** In the course of our representation, we may render tax advice to you on various legal matters. You understand that you may not use such tax advice to avoid any penalties that may be imposed by the Internal



Revenue Service unless, in accordance with the Internal Revenue Service rules of practice, we are specifically engaged to provide a formal, written tax opinion for that purpose. Accordingly, you acknowledge that we may legend any written tax advice that we provide in the course of this engagement to indicate that it may not be relied on for purposes of penalty protection. You further understand that our representation does not include the provision of any tax advice concerning transactions in which you may participate that would be “reportable transactions” within the meaning of Section 6707A of the Internal Revenue Code of 1986, as amended, and that our provision of tax advice concerning such transactions would require a separate engagement for that purpose. In particular, we shall not advise as to any transaction in which you may participate in which your or our disclosure of its tax treatment or tax structure is limited by any person other than you, our client, unless we are separately engaged by you for that purpose.

4. **STAFFING.** Customarily, each client of Ballard Spahr is served by a Relationship Partner (a principal lawyer contact) and one or more Matter Billing Lawyers (a lawyer designated to oversee an individual matter that Ballard Spahr handles on your behalf). Your work or parts of it may be performed by other lawyers and legal assistants at Ballard Spahr. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing services on the most efficient and timely basis.

5. **ELECTRONIC DISCOVERY.** In matters involving electronic discovery, Ballard Spahr will work closely with the client’s representatives and agents to ensure that all tasks associated with electronic discovery, including data preservation, data collection and processing, are performed in accordance with relevant legal and ethical standards. You agree to facilitate Ballard’s management of electronic discovery by timely assigning relevant business, legal or IT representatives, including retained vendors, to assist Ballard and its representatives as needed. If you choose to use Ballard Spahr’s electronic discovery system (Relativity®) for a given matter, you will be charged unit prices for data hosting and data processing, as set forth in Section 9 and in the Disbursement Pricing Schedule, in addition to fees for any necessary Litigation Support time.

6. **TERMINATION OF ENGAGEMENT.** Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. Your termination of our services will not affect your responsibility for payment of legal services rendered and additional charges incurred before termination and in connection with an orderly transition of the matter. If permission for withdrawal is required by a court, we will apply for such permission and you agree to engage successor counsel to represent you.

We are subject to the rules of professional responsibility for the jurisdictions in which we practice, which list several types of conduct or circumstances that require or allow us to withdraw from representing a client, including for example: nonpayment of fees or costs, misrepresentation or failure to disclose material facts, action contrary to our advice, and conflict of interest with another client. We try to identify in advance and discuss with our client any situation which may lead to our withdrawal, and if withdrawal ever becomes necessary, we give the client written notice of our withdrawal.

7. **CONCLUSION OF REPRESENTATION.** Unless previously terminated, our representation will conclude upon our sending you our final invoice for services rendered in this matter.

8. **RETENTION AND DISPOSITION OF DOCUMENTS.** Following the termination of our representation or the conclusion of the matter, any otherwise nonpublic information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by Ballard Spahr. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

9. **POST-ENGAGEMENT ISSUES.** You are engaging Ballard Spahr to provide legal services in connection with the matter referred to in the accompanying engagement letter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of the matter to provide additional advice on issues arising from the matter, Ballard Spahr has no continuing obligation to advise you with respect to future legal developments.

10. **FEES AND EXPENSES.** Our fees will be based primarily on the amount of time spent on your behalf. Each lawyer and legal assistant has an hourly billing rate based generally on experience and special knowledge. The rate multiplied by the time expended on your behalf, measured in tenths of an hour, will be the initial basis for determining the fee. The billing rates for this matter are specifically discussed in the engagement letter. These billing rates are subject to change from time to time. Other factors may be taken into consideration in determining our fees including the responsibility assumed, the novelty and difficulty of the legal problem involved, the skill required to perform the work, the particular experience or knowledge

provided, time limitations imposed by you or the transaction or matter, the benefit resulting to you, and any unforeseen circumstances arising in the course of our representation.

We will include on our invoices separate charges for performing services and expenses such as photocopying, messenger and delivery service, computerized research, travel, long-distance telephone fees, faxing fees and electronic discovery fees, including data hosting and data processing, in accordance with the attached Disbursement Pricing schedule. In litigation matters, such expenses may also include deposition costs, process servers, court reporters and witness fees. We may elect to have you billed directly for certain expenses such as consultants, appraisers, and local counsel.

Invoices normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon Bankruptcy Court authorization to pay our invoices. If any invoice remains unpaid for more than 60 days, we may suspend performing services for you and withdraw as your counsel unless arrangements satisfactory to us have been made for payment of outstanding invoices and the payment of future fees and expenses.

Fees and costs relating to this matter are not predictable. Accordingly, unless specifically stated to the contrary in the engagement letter, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. It is expressly understood that payment of Ballard Spahr's fees and costs is in no way contingent on the ultimate outcome of the matter.

11. **RETAINER AND TRUST DEPOSITS.** New clients of Ballard Spahr are commonly asked to deposit a retainer. If you deposit a retainer with us, you grant us a security interest in that deposit. Typically, the retainer is equal to the fees and costs likely to be incurred during a one-month period. It will be deposited in our general trust account. The retainer will be applied to our final billing in the matter and we will then return to you, without interest, any unearned portion of the retainer.

All trust deposits we receive from you, including retainers, will be placed in a trust account for your benefit. By court rule in each jurisdiction in which Ballard Spahr has an office, your deposit will be placed in a pooled account unless you request otherwise or we judge it appropriate to establish a segregated account. By court rule in each of these jurisdictions, interest earned on the pooled account is payable to a charitable foundation established in accordance with such court rule. Interest earned on any segregated trust account will be added to the deposit for your benefit and will be includable in your taxable income.

12. **CLIENT RESPONSIBILITIES.** You agree to pay our invoices for services and expenses in a timely manner as provided in paragraph nine, above. In addition, you will be candid and cooperative with us and will keep us informed with complete and accurate factual information, documents and other communications relevant to the subject matter of our representation or otherwise reasonably requested by us. Because it is important that we are able to contact you at all times in order to consult with you regarding your representation, you will inform us, in writing, of any changes in the name, address, telephone number, contact person, email address, state of incorporation or other relevant changes regarding you or your business. Whenever we need your instructions or authorization in order to proceed with legal work on your behalf, we will contact you at the latest business address we have received from you.

13. **CONFLICTS OF INTEREST.** Ballard Spahr represents many other companies and individuals. It is possible that present or future clients of Ballard Spahr will have disputes or transactions with you. For example, although we represent a bank in litigation, we may concurrently have clients whom we represent in connection with obtaining a loan from the same bank. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not *substantially related* to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.